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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,769	10/12/2005	Gerrit Hollemans	NL 030392	2211

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EXAMINER

MONIKANG, GEORGE C

ART UNIT	PAPER NUMBER
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2614

MAIL DATE	DELIVERY MODE
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12/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/552,769	Applicant(s) HOLLEMANS ET AL.	
	Examiner GEORGE C. MONIKANG	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-15 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 10/552,769.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/15/2008 have been fully considered but they are not persuasive.

2. With regards to applicant's argument that the Rast reference fails to teach a touch sensitive area and the touch sensitive area being pressure sensitive, the examiner maintains the rejection. Rast discloses that the wearer of a headset can control the headset via touch patterns (Rast, para 0055). These touch patterns will be used with a touch sensitive surface that detects the pressure of a touch as claimed by the applicant.

With regards to applicant's argument that the Rast reference does not create a digital representation of the output signal of the touch, the examiner maintains his stand. The touch output signal goes to a digital signal processor (Rast, fig. 3: 62); therefore it is a digital signal.

With regards to applicant's argument that Boesen does not disclose the device having a touch sensitive area that touches the user's ear. The examiner maintains his stand; the Boesen reference discloses a device that activates sound when touching the ear of the user (Boesen, col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear). The applicant never discloses how long the sound will be activated.

3. Applicant's arguments, filed 9/15/2008, with respect to the rejection(s) of claim(s) 4-5 & 10 under 10/552,769 have been fully considered and are persuasive. Therefore,

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the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3 & 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vossler, US Patent 7,206,429 B1 as applied to claim 1 above, in view of Rast, US Patent Pub. 2001/0046304 A1.

Re Claim 1, Vossler discloses a personal audio system comprising a remotely controllable device and a controller for remotely controlling the device by sending a control signal to the device (*fig. 1a: 110; col. 2, lines 26-35*) wherein, the controller being arranged to be substantially worn in or by a human ear (*fig. 1b*), but fails to disclose the controller includes an outer surface with a touch-sensitive area (*Rast, para 0055*); and is

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configured to detect a touching of touch-sensitive area (Rast, para 0055) and to send the control signal to control one or more functions of the personal audio system based on the touching (Rast, para 0055) as taught in Rast. It would have been obvious to use the touch sensitive area of Rast (Rast, para 0055) with the personal audio system of Vossler for the purpose of creating easier control by the user.

Re Claim 2, the combined teachings of Vossler and Rast disclose a system as claimed in claim 1, wherein the controller is arranged to fit substantially in a human ear concha (Vossler, fig. 1b), such that the touch-sensitive area is accessible for touching when the controller is fitted substantially in the concha (Vossler, fig. 1a: 110; fig. 1b; col. 2, lines 26-35: external controls are touch sensitive).

Re Claim 3, the combined teachings of Vossler and Rast disclose a system as claimed in claim 1, wherein the controller arranged to detect a predefined temporal pattern in the touching of the touch-sensitive area (Rast, para 0055), and to send the control signal in response to detecting the temporal pattern (Rast, para 0055).

Claims 7-9 have been analyzed and rejected according to claim 1.

Re Claim 10, the combined teachings of Vossler and Rast disclose a system as claimed in claim 1, including a touch-detecting means coupled to the touch-sensitive area (Rast, para 0055: touch patterns will be able to detect touch from a user), but fails to explicitly disclose whereby the touch-detecting means measures internal resistance of a part of the human body that touches the touch-sensitive area. However, it would have been obvious for one of ordinary skill to measure the resistance of human body

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that touches the touch sensitive area for the purpose of being able to detect the touch patterns of Rast.

Re Claim 11, the combined teachings of Vossler and Rast disclose a system as claimed in claim 10, including a temporal pattern analysis means coupled to the touch-detecting means (Rast, para 0055: touch patterns will be able to detect touch from a user), whereby the temporal pattern analysis means converts an output signal of the touch-detecting means into a digital representation of the output signal (Rast, para 0055: touch patterns will be able to detect touch from a user).

Re Claim 12, the combined teachings of Vossler and Rast disclose a system as claimed in claim 10, with a protruding touch sensitive area (Vossler, fig. 1a-1b); but fail to disclose whereby the controller consists of a disc containing a transducer, whereby the disc fits in a concha of an ear. However, official notice is taken that both the concepts and advantages of providing an earpiece with a disc containing a transducer are well known in the art. Thus it would have been obvious to modify the earpiece with a disc containing a transducer to be able to provide a better fit for the earpiece.

Re Claim 13, the combined teachings of Vossler and Rast disclose a system as claimed in claim 1, wherein the touch sensitive area detects a pressure with which the touch-sensitive area is touched (Rast, para 0055: touch patterns will be able to detect touch from a user).

Claim 14 has been analyzed and rejected according to claim 12.

Re Claim 15, the combined teachings of Vossler and Rast disclose a system as claimed in claim 1, where the touch sensitive area by being touched controls a plurality of functions of the personal audio system (*Rast, para 0055: touch patterns will be able to detect touch from a user*).

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vossler, US Patent 7,206,429 B1 and Rast, US Patent Pub. 2001/0046304 A1 as applied to claim 3 above, in view of Boesen, US Patent 6,560,468 B1.

Re Claim 4, Vossler and Rast disclose the system as claimed in claim 3, the outer surface has a second touch-sensitive area (*Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive*), the controller being arranged to send the control signal only if the second touch-sensitive area is touched (*Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32*), but fails to disclose the second touch-sensitive area touched substantially by the ear when the controller is substantially worn in or by a human ear as taught in Boesen (*Boesen, col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear*). It would have been obvious to use a conduction sensor of Boesen (*Boesen, col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear*) within Vossler for the purpose of the system being dynamic.

Re Claim 5, the combined teachings of Vossler, Rast and Boesen disclose the system as claimed in claim 4, wherein the controller is arranged to send a second control signal to the device if the second touch-sensitive area is touched (*Vossler, fig.*

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1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32).

Allowable Subject Matter

1. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

2. The following is a statement of reasons for the indication of allowable subject matter for claim 6: The prior art does not teach or moderately suggest the following limitations:

The system comprises a second controller for remotely controlling the device by sending a third control signal to the device, the second controller having an outer surface with a third touch-sensitive area, the second controller being arranged to be substantially worn in or by a human ear, and the second controller being further arranged to detect a second temporal pattern in the further touch-sensitive area being touched, and to send the further control signal in response to detecting the second temporal pattern.

Limitations such as these may be useful in combination with other limitations of claim 1.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE C. MONIKANG whose telephone number is (571)270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George C Monikang/
Examiner, Art Unit 2614

12/09/2008

/Vivian Chin/
Supervisory Patent Examiner, Art Unit 2614